

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CASEY RAFAEL TYLER,)	
)	
Plaintiff,)	
)	
v.)	1:15CV1011
)	
SGT. GADDY,)	
)	
Defendant.)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. The form of the Complaint is such that a serious flaw makes it impossible to further process the Complaint. The problem is:

1. The Complaint does not state a viable claim for relief under § 1983. Plaintiff's allegation is that Defendant stole a head covering from him without justification or proper documentation. Such a claim, if it existed under § 1983, would be a procedural due process claim for the improper taking of Plaintiff's property by a state employee. However, where a post-deprivation remedy is available under state law, then there is no procedural due process claim under § 1983 for such takings. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Chamberlain v. Jordan, No. 1:06CV73, 2006 WL 3386840, at *4 (M.D.N.C. Nov. 17, 2006) (unpublished). Prisoners in North Carolina may bring actions for conversion in the state courts. Wilkins v. Whitaker, 714 F.2d 4, 6 (4th Cir. 1983). Therefore, Plaintiff cannot bring a procedural due process claim under § 1983. Moore v. Plaster, 266 F.3d 928, 929-33 (8th Cir. 2001); Wilkins, *supra*; English v. Burke County Sheriff's Office, No. 1:11-cv-144-RJC, 2012 WL 3811798, at * 3-4 (W.D.N.C. Sept. 4, 2012) (unpublished); Chamberlin, *supra*. No other potential claim is apparent in the Complaint.

Consequently, the Complaint should be dismissed, but without prejudice to Plaintiff pursuing his post-deprivation remedies in the state courts. *In forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a new complaint in the state courts.

This, the 1st day of December, 2015.



Joe L. Webster
United States Magistrate Judge